

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*100-100000*

*31700*

**FILE:** B-219173

**DATE:** July 17, 1985

**MATTER OF:** Sermor Inc.

**DIGEST:**

The fact that a contracting agency made four consecutive nonresponsibility determinations does not constitute a de facto debarment by that agency because in each instance the agency's determination was subject to Small Business Administration's conclusive authority to determine if a small business is responsible.

Sermor Inc. protests an award to any other firm under invitation for bids (IFB) No. DAAE07-85-B-A070 issued by the Army Tank-Automotive Command. The Army determined that Sermor was nonresponsible and the Small Business Administration (SBA) subsequently declined to issue a certificate of competency (COC) to Sermor. We dismiss the protest.

Sermor complains that the Army's preaward survey did not fairly consider Sermor's financial capability or the firm's performance on prior contracts. According to Sermor, this is the Army's fourth consecutive nonresponsibility determination with respect to Sermor; Sermor asserts that the Army's actions amount to a de facto debarment.

The SBA has authority to determine conclusively the responsibility of a small business by issuing or refusing to issue a certificate of competency. 15 U.S.C. § 637(b)(7)(1982); Nevins Carpet Services, B-215387, June 27, 1984, 84-1 CPD ¶ 681. Here, the SBA has declined to issue a COC, thus in effect confirming the Army's nonresponsibility determination. Because it is the SBA that has the statutory authority to conclusively determine if a small business is responsible to perform a particular

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contract, we generally do not review negative responsibility determinations when a small business is involved. 4 C.F.R. § 21.3(f)(3) (1985); Consolidated Marketing Network, Inc., B-218108, Feb. 12, 1985, 85-1 CPD ¶ 190.

While the protester claims that it is the victim of a de facto debarment by the Army, since the protester is a small business the contracting agency's decision in each of the four instances mentioned by Sermor was subject to the SBA's independent determination. Consequently, the fact that the Army has found Sermor to be nonresponsible four consecutive times does not, in our view, indicate that there has been an improper de facto debarment.

The protest is dismissed.



Ronald Berger  
Deputy Associate  
General Counsel